

House File 265 - Introduced

HOUSE FILE 265

BY DAWSON

A BILL FOR

1 An Act relating to the involuntary commitment of a person with
2 an intellectual disability who presents a danger to self or
3 others, and making penalties applicable.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 222.2, Code 2015, is amended by adding
2 the following new subsections:

3 NEW SUBSECTION. 3A. "*Chemotherapy*" means the same as
4 defined in section 229.1.

5 NEW SUBSECTION. 3B. "*Clerk*" means the clerk of the district
6 court.

7 NEW SUBSECTION. 3C. "*Danger to self or others*" describes
8 the condition of a person with an intellectual disability who,
9 because of that intellectual disability, meets any of the
10 following criteria:

11 a. Is likely to physically injure the person's self or
12 others if allowed to remain at liberty without treatment.

13 b. Is likely to inflict serious emotional injury on the
14 person's family or others who lack a reasonable opportunity
15 to avoid contact with the person if the person is allowed to
16 remain at liberty without treatment.

17 c. Is unable to fulfill the basic needs of the person
18 including but not limited to nourishment, clothing, essential
19 medical care, or shelter so that it is likely that the person
20 will suffer physical injury, physical debilitation, or death.

21 NEW SUBSECTION. 5A. "*Mental health professional*" means the
22 same as defined in section 228.1.

23 NEW SUBSECTION. 5B. "*Physician*" means a physician licensed
24 under chapter 148.

25 NEW SUBSECTION. 5C. "*Psychologist*" means a psychologist
26 licensed under chapter 154B.

27 NEW SUBSECTION. 5D. "*Respondent*" means any person against
28 whom an application has been filed under section 222.93, but
29 who has not been finally ordered committed for full-time
30 custody care and treatment in a state resource center or an
31 appropriate public or private facility.

32 NEW SUBSECTION. 5E. "*Serious emotional injury*" means the
33 same as defined in section 229.1.

34 Sec. 2. NEW SECTION. 222.93 **Application for order of**
35 **involuntary commitment.**

1 1. Proceedings for the involuntary commitment of a person
2 with an intellectual disability who presents a danger to
3 self or others may be commenced by any interested person by
4 filing a verified application with the clerk of the county
5 where the respondent is presently located, or in which the
6 respondent's place of residence is located. The clerk, or the
7 clerk's designee, shall assist the applicant in completing the
8 application.

9 2. The application shall state the applicant's belief that
10 the respondent is a person with an intellectual disability who
11 presents a danger to self or others.

12 3. The application shall be accompanied by any of the
13 following:

14 a. A written statement of a physician or psychologist in
15 support of the application.

16 b. One or more supporting affidavits otherwise corroborating
17 the application.

18 c. Corroborative information obtained and reduced to
19 writing by the clerk or the clerk's designee, but only when
20 circumstances make it infeasible to comply with, or when the
21 clerk considers it appropriate to supplement the information
22 supplied pursuant to either paragraph "a" or "b".

23 **Sec. 3. NEW SECTION. 222.94 Service of notice upon**
24 **respondent.**

25 Upon the filing of an application pursuant to section
26 222.93, the clerk shall docket the case and immediately notify
27 a district judge, district associate judge, or magistrate who
28 is admitted to the practice of law in this state, who shall
29 review the application and accompanying documentation. If
30 the application is adequate as to form, the court may set a
31 time and place for a hearing on the application, if feasible,
32 but the hearing shall not be held less than forty-eight hours
33 after notice to the respondent unless the respondent waives
34 such minimum prior notice requirement. The court shall direct
35 the clerk to send copies of the application and supporting

1 documentation, together with a notice informing the respondent
2 of the procedures required by this chapter, to the sheriff or
3 the sheriff's deputy for immediate service upon the respondent.
4 If the respondent is taken into custody under section 222.99,
5 service of the application, documentation, and notice upon the
6 respondent shall be made at the time the respondent is taken
7 into custody.

8 **Sec. 4. NEW SECTION. 222.95 Involuntary proceedings —**
9 **minors — jurisdiction.**

10 The juvenile court has exclusive original jurisdiction in
11 proceedings concerning a minor for whom an application is filed
12 under section 222.93. In proceedings concerning a minor's
13 involuntary commitment or treatment, the term "court", "judge",
14 or "clerk" means the juvenile court, judge, or clerk.

15 **Sec. 5. NEW SECTION. 222.96 Procedure after application**
16 **filed.**

17 As soon as practicable after the filing of an application
18 pursuant to section 222.93, the court shall do all of the
19 following:

20 1. Determine whether the respondent has an attorney
21 who is able and willing to represent the respondent in the
22 commitment proceeding, and if not, whether the respondent
23 is financially able to employ an attorney and capable of
24 meaningfully assisting in selecting one. In accordance with
25 those determinations, the court shall if necessary allow the
26 respondent to select, or shall assign an attorney for the
27 respondent. If the respondent is financially unable to pay
28 an attorney, the attorney shall be compensated by the county
29 at an hourly rate to be established by the county board of
30 supervisors in substantially the same manner as provided in
31 section 815.7.

32 2. Cause copies of the application and supporting
33 documentation to be sent to the county attorney or the county
34 attorney's attorney-designate for review.

35 3. Issue a written order which shall do all of the

1 following:

2 *a.* If not previously done, set a time and place for a
3 commitment hearing, which shall be at the earliest practicable
4 time not less than forty-eight hours after notice to the
5 respondent, unless the respondent waives such minimum prior
6 notice requirement.

7 *b.* Order an examination of the respondent, prior to the
8 hearing, by one or more physicians or psychologists who shall
9 submit a written report on the examination to the court as
10 required by section 222.98.

11 Sec. 6. NEW SECTION. **222.97 Respondent's attorney informed.**

12 The court shall direct the clerk to furnish at once to the
13 respondent's attorney copies of the application filed pursuant
14 to section 222.93 and the supporting documentation, and of the
15 court's order issued pursuant to section 222.96, subsection
16 3. If the respondent is taken into custody under section
17 222.99, the attorney shall also be advised of that fact. The
18 respondent's attorney shall represent the respondent at all
19 stages of the proceedings, and shall attend the commitment
20 hearing.

21 Sec. 7. NEW SECTION. **222.98 Examination report.**

22 1. *a.* An examination of the respondent shall be conducted
23 by one or more physicians or psychologists, as required by the
24 court's order issued pursuant to section 222.96, subsection
25 3, within a reasonable time. If the respondent is detained
26 pursuant to section 222.99, subsection 1, paragraph "b",
27 the examination shall be conducted within twenty-four hours.
28 If the respondent is detained pursuant to section 222.99,
29 subsection 1, paragraph "a" or "c", the examination shall
30 be conducted within forty-eight hours. If the respondent
31 so desires, the respondent shall be entitled to a separate
32 examination by a physician or psychologist of the respondent's
33 own choice. The reasonable cost of the examinations shall, if
34 the respondent lacks sufficient funds to pay the cost, be paid
35 from county funds upon order of the court.

1 *b.* A physician or psychologist conducting an examination
2 pursuant to this section may consult with or request the
3 participation in the examination of any mental health
4 professional, and may include with or attach to the written
5 report of the examination any findings or observations by any
6 mental health professional who has been so consulted or has so
7 participated in the examination.

8 *c.* If the respondent is not taken into custody under
9 section 222.99, but the court is subsequently informed that
10 the respondent has declined to be examined by the physician or
11 psychologist pursuant to the court order, the court may order
12 such limited detention of the respondent as is necessary to
13 facilitate the examination of the respondent by the physician
14 or psychologist.

15 2. A written report of the examination by the
16 court-designated physician or psychologist shall be filed with
17 the clerk prior to the time set for hearing. A written report
18 of any examination by a physician or psychologist chosen by the
19 respondent may be similarly filed. The clerk shall immediately
20 do all of the following:

21 *a.* Cause the report or reports to be shown to the judge who
22 issued the order requiring the examination.

23 *b.* Cause the respondent's attorney to receive a copy of the
24 report of the court-designated physician or psychologist.

25 3. If the report of the court-designated physician or
26 psychologist is to the effect that the intellectually disabled
27 individual does not present a danger to self or others,
28 the court may without taking further action terminate the
29 proceeding and dismiss the application on its own motion and
30 without notice.

31 4. If the report of the court-designated physician or
32 psychologist is to the effect that the respondent is a person
33 with an intellectual disability who presents a danger to
34 self or others, the court shall schedule a hearing on the
35 application as soon as possible. The hearing shall be held

1 not more than forty-eight hours after the report is filed,
2 excluding Saturdays, Sundays, and holidays, unless an extension
3 for good cause is requested by the respondent, or as soon
4 thereafter as possible if the court considers that sufficient
5 grounds exist for delaying the hearing.

6 Sec. 8. NEW SECTION. 222.99 Judge may order immediate
7 custody.

8 1. If the applicant requests that the respondent be taken
9 into immediate custody and the judge, upon reviewing the
10 application and accompanying documentation, finds probable
11 cause to believe that the respondent has an intellectual
12 disability and is likely to injure the respondent's self or
13 others if allowed to remain at liberty, the judge may enter
14 a written order directing that the respondent be taken into
15 immediate custody by the sheriff or the sheriff's deputy and
16 be detained until the commitment hearing. The commitment
17 hearing shall be held no more than five days after the date of
18 the order, except that if the fifth day after the date of the
19 order is a Saturday, Sunday, or a holiday, the hearing may be
20 held on the next succeeding business day. If the expenses of
21 a respondent are payable in whole or in part by a county, for
22 a placement in accordance with paragraph "a", the judge shall
23 give notice of the placement to the regional administrator
24 for the respondent's county of residence, and for a placement
25 in accordance with paragraph "b", the judge shall order the
26 placement in a public or private facility designated through
27 the regional administrator for the respondent's county of
28 residence. The judge may order the respondent detained for
29 the period of time until the hearing is held, and no longer,
30 in accordance with paragraph "a", if possible, and if not then
31 in accordance with paragraph "b", or, only if neither of these
32 alternatives is available, in accordance with paragraph "c".

33 Placement may be:

34 a. In the custody of a relative, friend, or other suitable
35 person who is willing to accept responsibility for supervision

1 of the respondent, and the respondent may be placed under
2 such reasonable restrictions as the judge may order including
3 but not limited to restrictions on or a prohibition of any
4 expenditure, encumbrance, or disposition of the respondent's
5 funds or property.

6 *b.* In a suitable public or private facility within
7 or without the state, approved by the director of human
8 services, which facility shall be informed of the reasons why
9 immediate custody has been ordered and may provide treatment
10 which is necessary to preserve the respondent's life, or to
11 appropriately control behavior by the respondent which is
12 likely to result in physical injury to the respondent or
13 others if allowed to continue, but shall not otherwise provide
14 treatment to the respondent without the respondent's consent.

15 *c.* In a state resource center or to a special unit, provided
16 that detention in a jail or other facility intended for
17 confinement of those accused or convicted of crime shall not
18 be ordered.

19 2. The clerk shall furnish copies of any orders to the
20 respondent and to the applicant if the applicant files a
21 written waiver signed by the respondent.

22 Sec. 9. NEW SECTION. **222.100 Hearing procedure — findings.**

23 1. At the commitment hearing, evidence in support of the
24 contentions made in the application shall be presented by the
25 county attorney. During the hearing the applicant and the
26 respondent shall be afforded an opportunity to testify and
27 to present and cross-examine witnesses, and the court may
28 receive the testimony of any other interested person. The
29 respondent has the right to be present at the hearing. If
30 the respondent exercises that right and has been medicated
31 within twelve hours, or such longer period of time as the
32 court may designate, prior to the beginning of the hearing
33 or an adjourned session thereof, the judge shall be informed
34 upon convening of the hearing of that fact and of the probable
35 effects of the medication.

1 2. All persons not necessary for the conduct of the
2 hearing shall be excluded, except that the court may admit
3 persons having a legitimate interest to attend the hearing.
4 Upon motion of the county attorney, the judge may exclude
5 the respondent from the hearing during the testimony of any
6 particular witness if the judge determines that the witness's
7 testimony is likely to cause the respondent severe emotional
8 trauma.

9 3. The respondent's welfare shall be paramount and the
10 hearing shall be conducted in as informal a manner as may be
11 consistent with orderly procedure, but consistent therewith
12 the issue shall be tried as a civil matter. Such discovery
13 as is permitted under the Iowa rules of civil procedure shall
14 be available to the respondent. The court shall receive
15 all relevant and material evidence which may be offered and
16 need not be bound by the rules of evidence. There shall be
17 a presumption in favor of the respondent, and the burden of
18 evidence in support of the contentions made in the application
19 shall be upon the applicant.

20 4. The physician or psychologist who examined the
21 respondent shall be present at the hearing unless the court
22 for good cause finds that the physician's or psychologist's
23 presence is not necessary. The applicant, respondent, and the
24 respondent's attorney may waive the presence or the telephonic
25 appearance of the physician or psychologist who examined the
26 respondent and agree to submit as evidence the written report
27 of the physician or psychologist. The respondent's attorney
28 shall inform the court if the respondent's attorney reasonably
29 believes that the respondent, due to diminished capacity,
30 cannot make an adequately considered waiver decision. "*Good*
31 *cause*" for finding that the testimony of the physician or
32 psychologist who examined the respondent is not necessary may
33 include but is not limited to such a waiver. If the court
34 determines that the testimony of the physician or psychologist
35 is necessary, the court may allow the physician or the

1 psychologist to testify by telephone.

2 5. The court shall deny the application and terminate
3 the commitment hearing if upon completion of the hearing the
4 court does not find by clear and convincing evidence that the
5 respondent is a person with an intellectual disability who
6 presents a danger to self or others.

7 6. If the respondent is not taken into custody under section
8 222.99, but the court subsequently finds good cause to believe
9 that the respondent is about to depart from the jurisdiction of
10 the court, the court may order such limited detention of the
11 respondent as is authorized by section 222.99 and is necessary
12 to ensure that the respondent will not depart from the
13 jurisdiction of the court without the court's approval until
14 the proceeding relative to the respondent has been concluded.

15 7. The clerk shall furnish copies of any orders to the
16 respondent and to the applicant if the applicant files a
17 written waiver signed by the respondent.

18 Sec. 10. NEW SECTION. 222.101 Commitment order.

19 1. Upon completion of the commitment hearing the court shall
20 commit the respondent to the custody of the superintendent
21 of a state resource center if it is established by clear
22 and convincing evidence that the respondent is a person with
23 an intellectual disability who presents a danger to self or
24 others.

25 2. The superintendent shall coordinate with the regional
26 administrator for the respondent's county of residence in
27 identifying any public or private facilities, either within or
28 without the state, which would be an appropriate alternative to
29 the continued placement of the respondent in the state resource
30 center. If an appropriate public or private facility is
31 available and is willing to accept placement of the respondent,
32 the superintendent may transfer the respondent to that public
33 or private facility.

34 3. The superintendent of a state resource center in
35 coordination with the regional administrator for the

1 respondent's county of residence may modify the placement of
2 the respondent as appropriate.

3 4. The superintendent shall report to the court any changes
4 in the placement of the respondent.

5 Sec. 11. NEW SECTION. 222.102 **Contested placement — notice**
6 **and hearing.**

7 1. The respondent or the regional administrator of
8 the respondent's county of residence may challenge the
9 superintendent's placement of the respondent. A request for
10 a placement hearing may be signed by the respondent, the
11 respondent's next friend, guardian, or attorney or by the
12 regional administrator of the respondent's county of residence.

13 2. *a.* A placement hearing shall be held no sooner than four
14 days and no later than seven days after the request for the
15 placement hearing is filed unless otherwise agreed to by the
16 parties.

17 *b.* The respondent may be transferred to the placement
18 designated by the superintendent unless a request for hearing
19 is filed prior to the transfer. If the request for a placement
20 hearing is filed prior to the transfer, the court shall
21 determine where the respondent shall be detained until the date
22 of the hearing.

23 *c.* If the respondent's attorney has withdrawn, the court
24 shall appoint an attorney for the respondent in the manner
25 described in section 222.96.

26 3. Time periods shall be calculated for the purposes of this
27 section excluding weekends and official holidays.

28 4. If a respondent's expenses are payable in whole or
29 in part by a county, notice of a placement hearing shall be
30 provided to the county attorney and the regional administrator
31 of the respondent's county of residence. At the hearing, the
32 county attorney may present evidence regarding appropriate
33 placement.

34 5. In a placement hearing, the court shall determine a
35 placement for the respondent taking into consideration the

1 evidence presented by all the parties.

2 6. A placement made pursuant to an order entered under
3 this section shall be considered to be authorized through the
4 regional administrator of the respondent's county of residence.

5 Sec. 12. NEW SECTION. **222.103 Discharge and termination**
6 **of proceedings.**

7 1. When the condition of a respondent committed under
8 section 222.101, subsection 1, is such that in the opinion
9 of the superintendent the respondent no longer requires
10 commitment, the superintendent shall tentatively discharge the
11 respondent and immediately report that fact to the court which
12 ordered the respondent's commitment.

13 2. Upon receiving the report, the court shall either:

14 a. Issue an order confirming the respondent's discharge from
15 custody and terminating the proceeding pursuant to which the
16 order of commitment was issued.

17 b. Review the order committing the respondent. If the court
18 reviews the order of commitment and continues the commitment,
19 the court must find that the requirements for commitment under
20 section 222.101, subsection 1, continue to apply.

21 Sec. 13. NEW SECTION. **222.104 Escape from custody.**

22 A person who is committed to a state resource center or
23 public or private facility under section 222.99 or under
24 section 222.101 shall remain at the state resource center or
25 public or private facility unless discharged or otherwise
26 permitted to leave by the court, the superintendent of the
27 state resource center, or the administrator of the public or
28 private facility. If a person placed at a state resource
29 center or public or private facility leaves the state resource
30 center or public or private facility without having been
31 discharged or without permission, the superintendent or person
32 in charge of the public or private facility may notify the
33 sheriff of the person's absence and the sheriff shall take the
34 person into custody and return the person promptly to the state
35 resource center or public or private facility.

1 Sec. 14. NEW SECTION. **222.105 Status of respondent during**
2 **appeal.**

3 If a respondent appeals to the supreme court from a finding
4 that the contention that the respondent is a person with an
5 intellectual disability who presents a danger to self or
6 others has been sustained, and the respondent was previously
7 ordered taken into immediate custody under section 222.99 or
8 has been placed in a state resource center or public or private
9 facility for appropriate treatment under section 222.101 before
10 the court is informed of intent to appeal its finding, the
11 respondent shall remain in custody as previously ordered by the
12 court, the time limit stated in section 222.99 notwithstanding,
13 or shall remain in the state resource center or public or
14 private facility, subject to compliance by the state resource
15 center or public or private facility with sections 222.101
16 through 222.104, as the case may be, unless the supreme court
17 orders otherwise. If a respondent appeals to the supreme court
18 regarding a placement order, the respondent shall remain in
19 placement unless the supreme court orders otherwise.

20 Sec. 15. NEW SECTION. **222.106 Status of respondent if**
21 **commitment is delayed.**

22 When the court directs that a respondent who was previously
23 ordered taken into immediate custody under section 222.99
24 be placed in a state resource center or public or private
25 facility for appropriate treatment under section 222.101, and
26 no suitable state resource center or public or private facility
27 can immediately admit the respondent, the respondent shall
28 remain in custody as previously ordered by the court, the
29 time limit stated in section 222.99 notwithstanding, until a
30 suitable state resource center or public or private facility
31 can admit the respondent. The court shall take appropriate
32 steps to expedite the admission of the respondent to a suitable
33 state resource center or public or private facility at the
34 earliest feasible time.

35 Sec. 16. NEW SECTION. **222.107 Commitment — emergency**

1 **procedure.**

2 1. The procedure prescribed by this section shall be used
3 when it appears that a person should be immediately detained
4 because the respondent is a person with an intellectual
5 disability who presents a danger to self or others and an
6 application has not been filed naming the person as the
7 respondent pursuant to section 222.93 or the person cannot be
8 ordered into immediate custody and detained pursuant to section
9 222.99.

10 2. *a.* (1) In the circumstances described in subsection
11 1, any peace officer who has reasonable grounds to believe
12 that a person believed to have an intellectual disability
13 who presents a danger to self or others if not immediately
14 detained, may without a warrant take or cause that person to
15 be taken to the nearest available state resource center or
16 public or private facility as described in section 222.99,
17 subsection 1, paragraph "b" or "c". A person believed to have
18 an intellectual disability who presents a danger to self or
19 others if not immediately detained may be delivered to a state
20 resource center or public or private facility by someone other
21 than a peace officer.

22 (2) Upon delivery of the person believed to have an
23 intellectual disability who presents a danger to self or others
24 to the state resource center or public or private facility,
25 the examining physician or examining psychologist may order
26 treatment of the person, including chemotherapy, but only
27 to the extent necessary to preserve the person's life or to
28 appropriately control behavior by the person which is likely to
29 result in physical injury to that person or others if allowed
30 to continue.

31 (3) The peace officer who took the person into custody,
32 or other party who brought the person to the state resource
33 center or public or private facility, shall describe the
34 circumstances of the matter to the examining physician or
35 examining psychologist. If the person is a peace officer, the

1 peace officer may do so either in person or by written report.

2 (4) If the examining physician or examining psychologist
3 finds that there is reason to believe that the person is a
4 person with an intellectual disability who presents a danger
5 to self or others if not immediately detained, the examining
6 physician or examining psychologist shall at once communicate
7 with the nearest available magistrate as defined in section
8 801.4, subsection 10.

9 (5) The magistrate shall, based upon the circumstances
10 described by the examining physician or examining psychologist,
11 give the examining physician or examining psychologist
12 oral instructions either directing that the person be
13 released forthwith or authorizing the person's detention in
14 an appropriate state resource center or public or private
15 facility. A peace officer from the law enforcement agency
16 that took the person into custody, if available, during the
17 communication with the magistrate, may inform the magistrate
18 that an arrest warrant has been issued for or charges are
19 pending against the person and request that any oral or
20 written order issued under this subsection require the state
21 resource center or public or private facility to notify the law
22 enforcement agency about the discharge of the person prior to
23 discharge. The magistrate may also give oral instructions and
24 order that the detained person be transported to an appropriate
25 state resource center or public or private facility.

26 *b.* If the magistrate orders that the person be detained, the
27 magistrate shall, by the close of business on the next working
28 day, file a written order with the clerk in the county where it
29 is anticipated that an application may be filed under section
30 222.93. The order may be filed by facsimile if necessary. A
31 peace officer from the law enforcement agency that took the
32 person into custody, if no request was made under paragraph
33 "a", may inform the magistrate that an arrest warrant has
34 been issued for or charges are pending against the person and
35 request that any written order issued under this paragraph

1 require the state resource center or public or private facility
2 to notify the law enforcement agency about the discharge of
3 the person prior to discharge. The order shall state the
4 circumstances under which the person was taken into custody
5 or otherwise brought to a state resource center or public or
6 private facility, and the grounds supporting the finding of
7 probable cause to believe that the person is a person with an
8 intellectual disability who presents a danger to self or others
9 if not immediately detained. The order shall also include any
10 law enforcement agency notification requirements if applicable.
11 The written order shall confirm the oral order authorizing the
12 person's detention including any order given to transport the
13 person to an appropriate state resource center or public or
14 private facility. A peace officer from the law enforcement
15 agency that took the person into custody may also request an
16 order, separate from the written order, requiring the state
17 resource center or public or private facility to notify the
18 law enforcement agency about the discharge of the person prior
19 to discharge. The clerk shall provide a copy of the written
20 order or any separate order to the superintendent of the state
21 resource center or the administrator of the public or private
22 facility to which the person was originally taken, to any
23 subsequent state resource center or public or private facility
24 to which the person was transported, and to any law enforcement
25 department or ambulance service that transported the person
26 pursuant to the magistrate's order.

27 *c.* If an arrest warrant has been issued for or charges are
28 pending against the person, but no court order exists requiring
29 notification to a law enforcement agency under paragraph "a" or
30 "b", and if the peace officer delivers the person to a state
31 resource center or public or private facility and the peace
32 officer notifies the state resource center or public or private
33 facility in writing on a form prescribed by the department
34 of public safety that the state resource center or public or
35 private facility shall notify the law enforcement agency about

1 the discharge of the person prior to discharge, the state
2 resource center or public or private facility shall do all of
3 the following:

4 (1) Notify the dispatch of the law enforcement agency that
5 employs the peace officer by telephone prior to the discharge
6 of the person from the state resource center or public or
7 private facility.

8 (2) Notify the law enforcement agency that employs the peace
9 officer by electronic mail prior to the discharge of the person
10 from the state resource center or public or private facility.

11 3. The superintendent of a state resource center or the
12 administrator of the public or private facility shall examine
13 and may detain and care for the person taken into custody under
14 the magistrate's order for a period not to exceed forty-eight
15 hours from the time such order is dated, excluding Saturdays,
16 Sundays, and holidays, unless the order is sooner dismissed by
17 a magistrate. The state resource center or public or private
18 facility may provide treatment which is necessary to preserve
19 the person's life, or to appropriately control behavior by the
20 person which is likely to result in physical injury to the
21 person's self or others if allowed to continue, but shall not
22 otherwise provide treatment to the person without the person's
23 consent. The person shall be discharged from the state
24 resource center or public or private facility and released from
25 custody not later than the expiration of that period, unless an
26 application is sooner filed with the clerk pursuant to section
27 222.93. Prior to such discharge, the state resource center or
28 public or private facility shall, if required by this section,
29 notify the law enforcement agency requesting such notification
30 about the discharge of the person. The law enforcement
31 agency shall retrieve the person no later than six hours after
32 notification from the state resource center or public or
33 private facility but in no circumstances shall the detention of
34 the person exceed the period of time prescribed for detention
35 by this subsection. The detention of a person by the procedure

1 and not in excess of the period of time prescribed by this
2 section shall not render the peace officer, physician, state
3 resource center, or public or private facility so detaining the
4 person liable in a criminal or civil action for false arrest
5 or false imprisonment if the peace officer, physician, state
6 resource center, or public or private facility had reasonable
7 grounds to believe the person so detained was a person with an
8 intellectual disability and likely to physically injure the
9 person's self or others if not immediately detained, or if
10 the state resource center or public or private facility was
11 required to notify a law enforcement agency by this section,
12 and the law enforcement agency requesting notification prior to
13 discharge retrieved the person no later than six hours after
14 the notification, and the detention prior to the retrieval of
15 the person did not exceed the period of time prescribed for
16 detention by this subsection.

17 4. The cost of placement of a person detained temporarily by
18 the procedure prescribed in this section shall be paid by the
19 procedure prescribed in sections 222.50 and 222.60.

20 5. The department of public safety shall prescribe the form
21 to be used when a law enforcement agency desires notification
22 under this section from a state resource center or public or
23 private facility prior to discharge of a person admitted to
24 the state resource center or public or private facility and
25 for whom an arrest warrant has been issued or against whom
26 charges are pending. The form shall be consistent with all
27 laws, regulations, and rules relating to the confidentiality or
28 privacy of personal information or medical records, including
29 but not limited to the federal Health Insurance Portability
30 and Accountability Act of 1996, Pub. L. No. 104-191, and
31 regulations promulgated in accordance with that Act and
32 published in 45 C.F.R. pts. 160-164.

33 6. A state resource center or public or private facility,
34 which has been notified by a peace officer or a law enforcement
35 agency by delivery of a form as prescribed by the department of

1 public safety indicating that an arrest warrant has been issued
2 for or charges are pending against a person admitted to the
3 state resource center or public or private facility, that does
4 not notify the law enforcement agency about the discharge of
5 the person as required by subsection 2, paragraph "c", shall pay
6 a civil penalty as provided in section 805.8C, subsection 9.

7 Sec. 17. NEW SECTION. **222.108 Records of involuntary**
8 **commitment proceeding to be confidential.**

9 1. All papers and records pertaining to any involuntary
10 commitment ordered under this chapter or application filed
11 pursuant to section 222.93 of any person, whether part of the
12 permanent record of the court or of a file in the department of
13 human services, are subject to inspection only upon an order of
14 the court for good cause shown.

15 2. If authorized in writing by a person who has been the
16 subject of any involuntary proceeding under this chapter, or by
17 the parent or guardian of the person, information regarding the
18 person which is confidential under subsection 1 may be released
19 to any other designated person.

20 3. If all or part of the costs associated with the
21 commitment of an individual under this chapter are chargeable
22 to a county of residence, the clerk shall provide to the county
23 of residence and to the county in which the commitment order
24 is entered the following information pertaining to the person
25 which would be confidential under subsection 1:

26 a. Administrative information, as defined in section 228.1.

27 b. An examination order under this chapter and the location
28 of the individual's placement under the order.

29 c. A commitment or placement order under this chapter and
30 the location of the person's placement under the order.

31 d. The date, location, and disposition of any hearing
32 concerning the person held under this chapter.

33 e. Any payment source available for the costs of the
34 person's care.

35 4. This section shall not prohibit any of the following:

1 *a.* A public or private facility from complying with
2 the requirements of this chapter relative to financial
3 responsibility for the cost of care and treatment provided or
4 from properly billing any responsible relative or third-party
5 payer for such care or treatment.

6 *b.* A court or the department of public safety from
7 forwarding to the federal bureau of investigation information
8 that a person has been disqualified from possessing, shipping,
9 transporting, or receiving a firearm pursuant to section
10 724.31.

11 Sec. 18. NEW SECTION. 222.109 **Medical records to be**
12 **confidential — exceptions.**

13 1. *a.* The records maintained by a state resource center
14 or public or private facility relating to the examination,
15 custody, care, and treatment of any person in that state
16 resource center or public or private facility pursuant to this
17 chapter shall be confidential, except that the superintendent
18 of a state resource center or the administrator of a public or
19 private facility shall release appropriate information under
20 any of the following circumstances:

21 (1) The information is requested by a physician, attorney,
22 or advocate who provides the superintendent of a state resource
23 center or the administrator of a public or private facility
24 with a written waiver signed by the person about whom the
25 information is sought.

26 (2) The information is sought by a court order.

27 (3) The person who is committed or that person's guardian,
28 if the person is a minor or is not legally competent to do so,
29 signs an informed consent to release information. Each signed
30 consent shall designate specifically the person or agency to
31 whom the information is to be sent, and the information may be
32 released only to that person or agency.

33 *b.* Such records may be released by the superintendent of
34 a state resource center or the administrator of a public or
35 private facility when requested for the purpose of research

1 into the causes, incidence, nature, and treatment of persons
2 with an intellectual disability who present a danger to self
3 or others; however, information shall not be provided in a way
4 that discloses patients' names or which otherwise discloses any
5 patient's identity.

6 2. When the superintendent of a state resource center or the
7 administrator of a public or private facility deems it to be
8 in the best interest of the patient and the patient's next of
9 kin to do so, the superintendent or administrator may release
10 appropriate information during a consultation which the state
11 resource center or public or private facility shall arrange
12 with the next of kin of a voluntary or involuntary patient, if
13 requested by the patient's next of kin.

14 Sec. 19. NEW SECTION. 222.110 **Exclusive procedure for**
15 **involuntary commitment.**

16 Sections 222.93 through 222.107 constitute the exclusive
17 procedure for involuntary commitment of a person if there
18 is reason to believe that the person is a person with an
19 intellectual disability who presents a danger to self or others
20 in this state, except that this chapter does not negate the
21 provisions of section 904.503 relating to transfer of prisoners
22 with mental illness to state hospitals for persons with mental
23 illness and does not apply to commitments of persons under
24 chapter 812 or the rules of criminal procedure, Iowa court
25 rules, or negate the provisions of section 232.51 relating to
26 disposition of children with mental illness or an intellectual
27 disability.

28 Sec. 20. NEW SECTION. 222.111 **Rules for proceedings.**

29 The supreme court may prescribe rules of pleading, practice,
30 and procedure and the forms of process, writs, and notices
31 under section 602.4201, for all commitment proceedings in
32 a court of this state under this chapter. The rules shall
33 be drawn for the purpose of simplifying and expediting the
34 proceedings, so far as is consistent with the rights of the
35 parties involved. The rules shall not abridge, enlarge, or

1 modify the substantive rights of a party to a commitment
2 proceeding under this chapter.

3 Sec. 21. Section 331.653, subsection 23, Code 2015, is
4 amended to read as follows:

5 23. Carry out duties relating to the involuntary
6 hospitalization of persons with mental illness as provided
7 in sections 229.7 and 229.11 and carry out duties related to
8 the involuntary commitment of persons with an intellectual
9 disability who present a danger to self or others as provided
10 in sections 222.94 and 222.99.

11 Sec. 22. Section 602.4201, subsection 3, Code 2015, is
12 amended by adding the following new paragraph:

13 NEW PARAGRAPH. *i.* Involuntary commitment of persons with an
14 intellectual disability who present a danger to self or others.

15 Sec. 23. Section 805.8C, subsection 9, Code 2015, is amended
16 to read as follows:

17 9. *Notification violations.* For violations of section
18 222.107, subsection 6, and section 229.22, subsection 6, the
19 scheduled fine is one thousand dollars for a first violation
20 and two thousand dollars for a second or subsequent violation.
21 The scheduled fine under this subsection is a civil penalty,
22 and the criminal penalty surcharge under section 911.1 shall
23 not be added to the penalty.

24 EXPLANATION

25 The inclusion of this explanation does not constitute agreement with
26 the explanation's substance by the members of the general assembly.

27 This bill relates to the involuntary commitment of a person
28 with an intellectual disability who presents a danger to self
29 or others.

30 INVOLUNTARY COMMITMENT APPLICATION — PERSON WITH
31 INTELLECTUAL DISABILITY — DANGER TO SELF OR OTHERS. The bill
32 provides that any interested person may file an involuntary
33 commitment application for a person with an intellectual
34 disability who presents a danger to self or others with the
35 clerk of the district court of the county where the respondent

1 is presently located or which is the respondent's place of
2 residence. The application must contain information that the
3 respondent is a person with an intellectual disability who,
4 due to the person's intellectual disability, presents a danger
5 to self or others. The application must also be supported
6 by a written statement of a physician or psychologist in
7 support of the application; one or more supporting affidavits
8 otherwise corroborating the application; or other corroborative
9 information, if necessary. "Intellectual disability" is
10 defined in Code section 4.1 as a disability of children and
11 adults who as a result of inadequately developed intelligence
12 have a significant impairment in ability to learn or to
13 adapt to the demands of society, and, if a diagnosis is
14 required, "intellectual disability" means a diagnosis of mental
15 retardation as defined in the diagnostic and statistical manual
16 of mental disorders, fourth edition, text revised, published
17 by the American psychiatric association. "Danger to self or
18 others" is defined in the bill as a condition of a person with
19 an intellectual disability who, because of that intellectual
20 disability, is likely to physically injure the person's self
21 or others if allowed to remain at liberty without treatment;
22 is likely to inflict serious emotional injury on the person's
23 family or others who lack a reasonable opportunity to avoid
24 contact with the person if the person is allowed to remain at
25 liberty without treatment; or is unable to fulfill the basic
26 needs of the person including but not limited to nourishment,
27 clothing, essential medical care, or shelter so that it is
28 likely that the person will suffer physical injury, physical
29 debilitation, or death.

30 JUVENILES — JURISDICTION. The bill provides that the
31 juvenile court has exclusive original jurisdiction in
32 proceedings concerning a minor for whom an application is filed
33 under the bill.

34 PROCEDURE AFTER APPLICATION FILED. The bill provides that,
35 as soon as practicable after the filing of an application, the

1 court is required to determine whether the respondent has an
2 attorney and if not, whether the respondent is financially able
3 to employ an attorney and capable of meaningfully assisting
4 in selecting one. If the respondent is financially unable
5 to pay an attorney, the attorney shall be compensated by the
6 county at an hourly rate to be established by the county board
7 of supervisors. The court is also required to send copies
8 of the application to the county attorney, issue a written
9 order setting a time and place for a commitment hearing, which
10 shall be at the earliest practicable time not less than 48
11 hours after notice to the respondent, unless the respondent
12 waives the notice requirement, and order an examination of the
13 respondent, prior to the hearing by one or more physicians or
14 psychologists.

15 EXAMINATION. The bill provides that the respondent shall
16 be examined by one or more physicians or psychologists, as
17 required by the court's order, within a reasonable time. If
18 the respondent is detained, the examination shall be conducted
19 within 24 hours or 48 hours depending upon the circumstances
20 of the detainment. The respondent may also request a separate
21 examination by a physician or psychologist of the respondent's
22 own choice. The reasonable cost of the examinations shall,
23 if the respondent lacks sufficient funds to pay the cost, be
24 paid from county funds upon order of the court. A physician
25 or psychologist conducting an examination may consult with or
26 request a mental health professional to participate in the
27 examination.

28 EXAMINATION REPORT. A written report of the examination by
29 any physician or psychologist (court-designated or a physician
30 or psychologist chosen by the respondent) shall be filed with
31 the clerk of the district court prior to the time set for the
32 hearing and the clerk must provide the report or reports to the
33 judge and the respondent's attorney.

34 If the report of the court-designated physician or
35 psychologist concludes that the respondent is a person with an

1 intellectual disability who does not present a danger to self
2 or others, the court may terminate the commitment proceeding
3 and dismiss the application on its own motion and without
4 notice. If the report of the court-designated physician or
5 psychologist concludes that the respondent is a person with
6 an intellectual disability who presents a danger to self or
7 others, the court is required to schedule a hearing on the
8 application as soon as possible and not more than 48 hours
9 after the report is filed unless an extension for good cause is
10 shown.

11 IMMEDIATE CUSTODY. If the applicant requests that the
12 respondent be taken into immediate custody and the judge finds
13 probable cause to believe that the respondent is a person
14 with an intellectual disability and is likely to injure the
15 respondent's self or others if allowed to remain at liberty,
16 the judge may enter a written order directing that the
17 respondent be taken into immediate custody by the sheriff or
18 the sheriff's deputy and be detained until the commitment
19 hearing. In this case, the commitment hearing shall be held no
20 more than five days after the date of the order or on the next
21 succeeding business day.

22 If the expenses of a respondent are payable in whole or in
23 part by a county, and the respondent is placed in the custody
24 of a relative, friend, or other suitable person who is willing
25 to accept responsibility for supervision of the respondent,
26 the court is required to give notice of the placement to
27 the regional administrator for the respondent's county of
28 residence. If the respondent is placed in a suitable public or
29 private facility within or without the state, approved by the
30 director of human services, the court is required to order the
31 placement in a public or private facility designated through
32 the regional administrator for the respondent's county of
33 residence. If neither of these alternatives is available, the
34 court may order the respondent be placed in a state resource
35 center or in a special unit.

1 COMMITMENT HEARING. At the commitment hearing, the
2 respondent's welfare is paramount and the hearing shall
3 be conducted in an informal manner consistent with orderly
4 procedure. Evidence in support of the contentions made in the
5 application is presented by the county attorney. During the
6 hearing, the applicant and the respondent have the opportunity
7 to testify and to cross-examine witnesses and the court may
8 receive the testimony of any other interested person. The
9 respondent has the right to be present at the hearing and the
10 court may admit persons having a legitimate interest to attend
11 the hearing. The court may exclude the respondent from the
12 hearing during the testimony of any particular witness if the
13 court determines that the witness's testimony is likely to
14 cause the respondent severe emotional trauma. There shall be
15 a presumption in favor of the respondent, and the burden of
16 evidence in support of the contentions made in the application
17 shall be upon the applicant. The physician or psychologist
18 who examined the respondent is required to be present at
19 the hearing unless the court for good cause finds that the
20 physician's or psychologist's presence is not necessary or the
21 physician's or psychologist's presence is waived. If upon
22 completion of the hearing the court finds that the contentions
23 that form the basis for the commitment hearing have not been
24 sustained by clear and convincing evidence, it shall deny the
25 application and terminate the proceeding.

26 COMMITMENT ORDER. The court shall commit the respondent to
27 the custody of the superintendent of a state resource center
28 for placement if it is established by clear and convincing
29 evidence that the respondent is a person with an intellectual
30 disability who presents a danger to self or others.

31 The superintendent is required to coordinate with the
32 regional administrator for the respondent's county of residence
33 in identifying any public or private facilities, either
34 within or without the state, which would be an appropriate
35 alternative to the continued placement of the respondent in the

1 state resource center. If an appropriate public or private
2 facility is available and is willing to accept placement of the
3 respondent, the superintendent may transfer the respondent to
4 that public or private facility.

5 The superintendent of a state resource center in
6 coordination with the regional administrator for the
7 respondent's county of residence may modify the placement of
8 the respondent as appropriate and shall report to the court any
9 changes in the placement of the respondent.

10 CONTESTED PLACEMENT — NOTICE AND HEARING. The regional
11 administrator of the respondent's county of residence or the
12 respondent may challenge the superintendent's placement of
13 the respondent. A placement hearing shall be held no sooner
14 than four days and no later than seven days after the request
15 for the placement hearing is filed unless otherwise agreed
16 to by the parties. The respondent may be transferred to the
17 placement designated by the superintendent unless a request for
18 hearing is filed prior to the transfer. If the request for a
19 placement hearing is filed prior to the transfer, the court
20 shall order where the respondent shall be detained until the
21 date of the hearing. In a placement hearing, the court shall
22 order a placement for the respondent taking into consideration
23 the evidence presented by all the parties. A placement made
24 pursuant to an order entered under this provision shall be
25 considered to be authorized through the regional administrator
26 of the respondent's county of residence.

27 DISCHARGE AND TERMINATION OF PROCEEDINGS. When the
28 condition of a committed respondent is such that in the
29 opinion of the superintendent the respondent no longer requires
30 commitment, the superintendent shall tentatively discharge the
31 respondent and immediately report that fact to the court which
32 ordered the respondent's commitment and the court may issue an
33 order confirming the respondent's discharge from custody and
34 terminating the proceeding or continue the commitment if the
35 court finds the requirements for commitment continue to apply.

1 ESCAPE FROM CUSTODY. If a person placed at a state resource
2 center or public or private facility leaves the state resource
3 center or public or private facility without having been
4 discharged or without permission, the superintendent or person
5 in charge of the public or private facility may notify the
6 sheriff of the person's absence and the sheriff shall take the
7 person into custody and return the person promptly to the state
8 resource center or public or private facility.

9 STATUS OF RESPONDENT DURING APPEAL. If a respondent appeals
10 to the Iowa supreme court from a finding that the contention
11 that the respondent is a person with an intellectual disability
12 who presents a danger to self or others has been sustained,
13 and the respondent was previously ordered taken into immediate
14 custody or has been placed in a state resource center or public
15 or private facility for appropriate treatment before the court
16 is informed of intent to appeal its finding, the respondent
17 shall remain in custody or shall remain in the state resource
18 center or public or private facility unless the supreme court
19 orders otherwise. If a respondent appeals to the supreme court
20 regarding a placement order, the respondent shall remain in
21 placement unless the supreme court orders otherwise.

22 STATUS OF RESPONDENT IF COMMITMENT DELAYED. When the court
23 directs that a respondent who was previously ordered taken
24 into immediate custody be placed in a state resource center or
25 public or private facility for appropriate treatment and no
26 suitable state resource center or public or private facility
27 can immediately admit the respondent, the respondent shall
28 remain in custody as previously ordered by the court until a
29 suitable state resource center or public or private facility
30 can admit the respondent.

31 EMERGENCY COMMITMENT — PROCEDURE. The bill provides
32 an emergency commitment procedure for a situation where a
33 person should be immediately detained due to the person having
34 an intellectual disability and presenting a danger to self
35 or others if an application has not been filed naming the

1 person as the respondent or the person cannot be ordered into
2 immediate custody and detained.

3 A peace officer or someone other than a peace officer who has
4 reasonable grounds to believe that a person has an intellectual
5 disability and presents a danger to self or others if not
6 immediately detained, may without a warrant take or cause that
7 person to be taken to the nearest available state resource
8 center or public or private facility. Upon delivery of the
9 person to the state resource center or a public or private
10 facility, the examining physician or examining psychologist may
11 order emergency treatment of that person. If the examining
12 physician or examining psychologist finds that there is reason
13 to believe that the person is a person with an intellectual
14 disability who presents a danger to self or others if not
15 immediately detained, the examining physician or examining
16 psychologist shall at once communicate with the nearest
17 available magistrate who shall, based upon the circumstances
18 described by the examining physician or examining psychologist,
19 give the examining physician or examining psychologist oral
20 instructions either directing that the person be released or
21 authorizing the person's detention in an appropriate state
22 resource center or public or private facility.

23 A peace officer from the law enforcement agency that took the
24 person into custody may inform the magistrate who ordered that
25 the person be detained that an arrest warrant has been issued
26 for or charges are pending against the person and request that
27 any written order issued require the state resource center
28 or public or private facility to notify the law enforcement
29 agency about the discharge of the person prior to discharge.
30 A peace officer from the law enforcement agency that took the
31 person into custody may also request an order, separate from
32 the written order, requiring the state resource center or
33 public or private facility to notify the law enforcement agency
34 about the discharge of the person prior to discharge. The
35 clerk shall provide a copy of the written order or any separate

1 order to the superintendent of the state resource center or
2 the administrator of the public or private facility to which
3 the person was originally taken, to any subsequent state
4 resource center or public or private facility to which the
5 person was transported, and to any law enforcement department
6 or ambulance service that transported the person pursuant to
7 the magistrate's order.

8 The superintendent of a state resource center or the
9 administrator of the public or private facility shall examine
10 and may detain and care for the person taken into custody under
11 the magistrate's order for a period not to exceed 48 hours
12 from the time such order is dated unless dismissed earlier by
13 a magistrate. The state resource center or public or private
14 facility may provide treatment which is necessary to preserve
15 the person's life, or to appropriately control behavior by the
16 person which is likely to result in physical injury to the
17 person's self or others if allowed to continue, but shall not
18 otherwise provide treatment to the person without the person's
19 consent. The person shall be discharged from the state
20 resource center or public or private facility and released from
21 custody not later than the expiration of that period, unless an
22 application for involuntary commitment is filed.

23 Prior to such discharge, the state resource center or
24 public or private facility shall, if required, notify the law
25 enforcement agency requesting such notification about the
26 discharge of the person. The law enforcement agency shall
27 retrieve the person no later than six hours after notification
28 from the state resource center or public or private facility
29 but in no circumstances shall the detention of the person
30 exceed the period of time prescribed for detention. The
31 detention of a person by the procedure and not in excess of the
32 period of time prescribed shall not render the peace officer,
33 physician, state resource center, or public or private facility
34 so detaining the person liable in a criminal or civil action
35 for false arrest or false imprisonment if the peace officer,

1 physician, state resource center, or public or private facility
2 had reasonable grounds to believe the person so detained is a
3 person with an intellectual disability who presents a danger
4 to self or others if not immediately detained, or if the state
5 resource center or public or private facility was required
6 to notify a law enforcement agency, and the law enforcement
7 agency requesting notification prior to discharge retrieved the
8 person no later than six hours after the notification, and the
9 detention prior to the retrieval of the person did not exceed
10 the period of time prescribed for detention. A state resource
11 center or public or private facility properly notified that
12 does not notify the law enforcement agency about the discharge
13 of the person under the emergency commitment procedures in the
14 bill may be subject to a civil penalty.

15 RECORDS — CONFIDENTIALITY. The bill provides that all
16 papers and records pertaining to any involuntary commitment or
17 application of any person under the bill, whether part of the
18 permanent record of the court or of a file in the department
19 of human services, are subject to public inspection only upon
20 an order of the court for good cause shown or if authorized
21 by a person who has been the subject of any involuntary
22 proceeding under the bill or by the parent or guardian of that
23 person. Certain information relating to costs associated with
24 the commitment of a person under the bill may be released to
25 certain entities.

26 The bill further provides that the medical records
27 maintained by a state resource center or public or private
28 facility relating to the examination, custody, care, and
29 treatment of any person in that state resource center or
30 public or private facility shall be confidential, except for
31 requests by a physician, attorney, or advocate who provides the
32 superintendent of a state resource center or the administrator
33 of a public or private facility with a written waiver signed
34 by the person about whom the information is sought, a court
35 order, or through informed consent. Such medical records

1 may also be released by the superintendent of a state
2 resource center or the administrator of a public or private
3 facility when requested for the purpose of research into the
4 causes, incidence, nature, and treatment of persons with an
5 intellectual disability who present a danger to self or others.

6 EXCLUSIVE PROCEDURE. The bill provides the exclusive
7 procedure for involuntary commitment of persons with an
8 intellectual disability who present a danger to self or
9 others in this state, except that the bill does not negate
10 the provisions of Code section 904.503 relating to transfer
11 of prisoners with mental illness to state hospitals for
12 persons with mental illness and does not apply to commitments
13 of persons under Code chapter 812 or the rules of criminal
14 procedure, Iowa court rules, or negate the provisions of Code
15 section 232.51 relating to disposition of children with mental
16 illness or an intellectual disability.

17 MISCELLANEOUS. The bill contains provisions relating to
18 service of notice and supreme court rules of proceedings.

19 The bill makes conforming Code changes relating to the
20 duties of the sheriff, the authority of the supreme court
21 to prescribe rules governing actions and proceedings, and
22 miscellaneous scheduled violations. The bill also provides
23 related definitions.